

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

WHEELER PEAK, LLC,
an Illinois limited liability company,

Plaintiff,

vs.

No. CIV 07-1117 JB/WDS

L.C.I.2, INC., a New Mexico Corporation,

Defendant.

L.C.I.2, INC., a New Mexico Corporation,

Counterclaimant,

vs.

WHEELER PEAK, LLC,
an Illinois limited liability company,
KMG, INC., an Illinois Corporation, and
KEITH GILES, an individual,

Counter-Defendants.

L.C.I.2, INC., a New Mexico Corporation,

Third-Party Plaintiff,

vs.

DONNER PLUMBING AND HEATING, INC.,
JC CONSTRUCTORS, INC., and DE LA
TORRE ARCHITECTS, P.A., A.I.A., and
Simplex Grinnell, LP, Melissa Deaver-Rivera,
Carl Davis and Lisa Davis, husband and wife,
David Borns, Roy Diklich and Kathy Diklich,
husband and wife, Kent Nix and Angela Nix,
husband and wife, Joseph Forbess and Lisa Forbess,
husband and wife, and Ted Galanthay and Phyllis Galanthay,
husband and wife,

Third-Party Defendants.

DONNER PLUMBING AND HEATING, INC.,

Third-Party Plaintiff,

vs.

PARKER EXCAVATING, INC.,

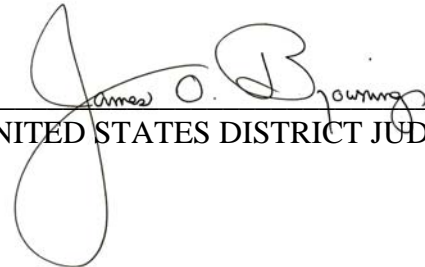
Third-Party Defendant.

ORDER

THIS MATTER comes before the Court on a letter from Linda Holley to the Court (dated March 24, 2010), filed March 24, 2010 in the related matter of Clarendon National Insurance Company et al. v. Wheeler Peak, LLC et al., No. CIV 09-0294 (Doc. 48). In the letter, Linda Holley asserts that she is being treated unfairly by the other litigants in these proceedings, and asks the Court not to allow the other parties to enter a settlement or close the case until her claims have also been settled. The Court denied Holley's Motion to Intervene and Assert Claim in a Memorandum Opinion and Order entered January 25, 2010 (Doc. 476). Holley, therefore, is not a party to this proceeding, and her assent to settlement is not required. She thus has no standing to challenge any settlement or dismissal into which the parties may agree. See Marino v. Ortiz, 484 U.S. 301, 304 (1988)(affirming the United States Court of Appeals for the Second Circuit's holding that "a district court may dismiss as an impermissible collateral attack a lawsuit challenging a consent decree by nonparties to the underlying litigation"); S. Utah Wilderness Alliance v. Kempthorne, 525 F.3d 966, 968 (10th Cir. 2008)("[N]on-parties in the district court[] suggest their first appeal from the district court's judgment is viable even though the district court had yet to rule on their motion to intervene at the time they filed their notice of appeal. We think not."). The Court will thus overrule the objections in her March 24, 2010 letter and any further objections that she may attempt to make regarding the settlement of this proceeding. If Holley wants relief from these parties for wrongs to

her, she will need to seek relief personal to her in a separate action and not in this one.

IT IS ORDERED that the objections contained in Linda Holley's March 24, 2010 letter to the Court are overruled based on Holley's lack of standing to challenge any settlement or consent judgment in this case.



UNITED STATES DISTRICT JUDGE

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Denied Plaintiff-Intervenor